

TITLE 327 WATER POLLUTION CONTROL BOARD

DRAFT RULE #01-51 (WPCB)

DIGEST

Amends 327 IAC 5-4-3 and adds 327 IAC 15-15. Under the Clean Water Act, CAFOs are point sources subject to the National Pollutant Discharge Elimination System (NPDES) permit process. This requirement is found in federal regulations at 40 CFR 122.23(a). The term "CAFO" is defined in 40 CFR 122. This language has been adopted in Indiana and is found in the Indiana Administrative Code at 327 IAC 5-4-3 concerning special NPDES programs. Based on a decision from the United States District Court for the Southern District of Indiana, the Indiana Department of Environmental Management (IDEM) is required to select one of three options for pursuing NPDES permits for CAFOs in Indiana. IDEM believes that development of a general permit rule is the most time and resource effective means to comply with this court order. Further, amendments to the federal rules have occurred that require IDEM to update its rules.

IDEM has a separate program to regulate confined feeding operations (CFOs). This program is required under IC 13-18-10. However, the requirements of that program do not, in all instances, meet the requirements for a NPDES permit under federal law. IDEM believes the most effective way to address the issue of federal NPDES requirements of the Clean Water Act is in a separate rulemaking that considers all the alternatives available for compliance with the federal requirements.

IDEM has amended rule language at 327 IAC 5-4-3 and drafted new rule language for a NPDES general permit for CAFOs at 327 IAC 15-15. Effective thirty (30) days after filing.

HISTORY

First Notice of Comment Period: March 1, 2001, Indiana Register (24 IR 1976).

Second Notice Of Comment Period and Notice of First Hearing: February 1, 2003 (26 IR 1737).

First Hearing: April 9, 2003.

Change in Hearing Notice: May 1, 2003.

First Hearing: May 8, 2003.

327 IAC 5-4-3
327 IAC 15-15-1
327 IAC 15-15-2
327 IAC 15-15-3
327 IAC 15-15-4
327 IAC 15-15-5
327 IAC 15-15-6
327 IAC 15-15-7

327 IAC 15-15-8
327 IAC 15-15-9
327 IAC 15-15-10
327 IAC 15-15-11
327 IAC 15-15-12
327 IAC 15-15-13
327 IAC 15-15-14
327 IAC 15-15-15

Draft Rule

SECTION 1. 327 IAC 5-4-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-4-3 Concentrated animal feeding operations

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 3. (a) Concentrated animal feeding operations are point sources ~~subject to the that require NPDES permit~~ program permits for discharges or potential discharges. Once an operation is defined as a CAFO under this section, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal. Except as provided in subsection (d), all CAFO owners or operators must seek coverage under either an individual NPDES permit or a general NPDES permit under 327 IAC 15-15.

(b) The following definitions apply throughout this rule:

(1) "Animal confinement area" means the areas of the facility where animals are housed. It includes, but is not limited to, the following areas:

- (A) Open lots.
- (B) Housed lots.
- (C) Feedlots.
- (D) Confinement houses.
- (E) Stall barns.
- (F) Free stall barns.
- (G) Milk rooms.
- (H) Milking center.
- (I) Cowyards.
- (J) Barnyards.
- (K) Medication pens.
- (L) Walkers.
- (M) Animal walkways.
- (N) Stables.

(+) (2) "Animal feeding operation" or "AFO" means the following:

(A) A lot or facility, where the following conditions are met:

- ~~(A)~~ (i) Animals, other than aquatic animals, **that** have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any **twelve** (12) month period. **and**
- ~~(B)~~ (ii) Crops, vegetation, forage growth, or post-harvest residues **that** are not sustained in the normal growing season over any portion of the lot or facility.

(B) Two (2) or more animal feeding operations under common ownership are considered, for the purposes of this article, ~~(327 IAC 5);~~ to be a single animal feeding operation if **they the operations** adjoin each other or if **they the operations** use a common area or system for the disposal of wastes.

~~(2)~~ (3) "Concentrated animal feeding operation" or "CAFO" means an animal feeding operation which meets the criteria set forth in clause ~~(A)~~ or ~~(B)~~ or which is designated AFO that is one (1) of the following:

(A) A large CAFO.

(B) A medium CAFO.

(C) Designated as a CAFO by the commissioner under subsection (c).

~~(A)~~ More than the numbers of animals specified in any of the following categories are confined:

- ~~(i)~~ one thousand (1,000) slaughter and feeder cattle;
- ~~(ii)~~ seven hundred (700) mature dairy cattle (whether milked or dry cows);
- ~~(iii)~~ two thousand five hundred (2,500) swine each weighing over 25 kilograms (approximately 55 pounds);
- ~~(iv)~~ five hundred (500) horses;
- ~~(v)~~ ten thousand (10,000) sheep or lambs;
- ~~(vi)~~ fifty-five thousand (55,000) turkeys;
- ~~(vii)~~ one hundred thousand (100,000) laying hens or broilers (if the facility has continuous overflow watering);
- ~~(viii)~~ thirty thousand (30,000) laying hens or broilers (if the facility has a liquid manure system);
- ~~(ix)~~ five thousand (5,000) ducks; or
- ~~(x)~~ one thousand (1,000) animal units; or

~~(B)(i)~~ Either pollutants are discharged from the facility into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or pollutants are discharged directly from the facility into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation; provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a twenty-five (25) year, twenty-four (24) hour storm event; and

~~(ii)~~ More than the following numbers of animals are confined in any of the following categories:

- ~~(A)~~ three hundred (300) slaughter or feeder cattle;
- ~~(B)~~ two hundred (200) mature dairy cattle (whether milked or dry cows);
- ~~(C)~~ seven hundred fifty (750) swine, each weighing over 25 kilograms;
- ~~(D)~~ one hundred fifty (150) horses;
- ~~(E)~~ three thousand (3,000) sheep or lamb;
- ~~(F)~~ sixteen thousand five hundred (16,500) turkeys;
- ~~(G)~~ thirty thousand (30,000) laying hens or broilers (if the facility has continuous overflow watering);

- (HH) nine thousand (9,000) laying hens or broilers (if the facility has a liquid manure handling system);
- (H) one thousand five hundred (1,500) ducks; or
- (J) three hundred (300) animal units.

(3) "Animal unit" means a unit of measurement for any animal feeding operation such that the total animal units is calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0; plus the number of mature dairy cattle multiplied by 1.4; plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4; plus the number of sheep multiplied by 0.1; plus the number of horses multiplied by 2.0. Two (2) or more AFOs under common ownership that are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for disposal of wastes.

(4) "CFO approval" means a valid approval issued by the commissioner under 327 IAC 16.

(5) "Land application area" means land under the control of an AFO owner or operator, whether the land is owned, rented, or leased, or subject to an access agreement, to which manure, litter, or process wastewater from the production area is or may be applied.

(6) "Large concentrated animal feeding operation" or "large CAFO" means an AFO that stables or confines as many as or more than the number specified in any of the following categories:

- (A) Seven hundred (700) mature dairy cows, whether milked or dry.
- (B) One thousand (1,000) veal calves.
- (C) One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.
- (D) Two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more.
- (E) Ten thousand (10,000) swine each weighing less than fifty-five (55) pounds.
- (F) Five hundred (500) horses.
- (G) Ten thousand (10,000) sheep or lambs.
- (H) Fifty-five thousand (55,000) turkeys.
- (I) Thirty thousand (30,000) hens or broilers, if the AFO uses a liquid manure handling system.
- (J) One hundred twenty-five thousand (125,000) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.
- (K) Eighty-two thousand (82,000) laying hens, if the AFO uses other than a liquid manure handling system.
- (L) Thirty thousand (30,000) ducks, if the AFO uses other than a liquid manure handling system for ducks.
- (M) Five thousand (5,000) ducks, if the AFO uses a liquid manure handling system for ducks.

(7) "Liquid manure handling system for ducks" means any waste collection or storage system that involves the use of ponds for animal confinement and that collects waste generated by ducks or contaminated storm water from the production area.

(8) "Manure" means animal waste, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.

(9) "Manure storage area" means any area where manure is kept. It includes, but is not limited to, the following areas:

- (A) Lagoons.
- (B) Run-off ponds.
- (C) Storage sheds.
- (D) Stockpiles.
- (E) Under house or pit storages.
- (F) Liquid impoundments.
- (G) Static piles.
- (H) Composting piles.

(4) "Manmade" means constructed by man and used for the purpose of transporting wastes.

(10) "Medium concentrated animal feeding operation" or "medium CAFO" means:

- (A) any AFO that stables or confines the type and number of animals that fall within any of the following ranges and has been defined or designated as a CAFO:
 - (i) Two hundred (200) to six hundred ninety-nine (699) mature dairy cattle, whether milked or dry.
 - (ii) Three hundred (300) to nine hundred ninety-nine (999) veal calves.
 - (iii) Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf

- pairs.
- (iv) Seven hundred fifty (750) to two thousand four hundred ninety-nine (2,499) swine each weighing fifty-five (55) pounds or more.
 - (v) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) swine each weighing less than fifty-five (55) pounds.
 - (vi) One hundred fifty (150) to four hundred ninety-nine (499) horses.
 - (vii) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) sheep or lambs.
 - (viii) Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys.
 - (ix) Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers, if the AFO uses a liquid manure handling system.
 - (x) Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.
 - (xi) Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens, if the AFO uses other than a liquid manure handling system.
 - (xii) Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks, if the AFO uses other than a liquid manure handling system for ducks.
 - (xiii) One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks, if the AFO uses a liquid manure handling system for ducks; and
- (B) one (1) of these conditions are met:
- (i) pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or
 - (ii) pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
- (11) “No potential to discharge” means that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the state under any circumstance or climatic condition.
- (12) “Process wastewater” means the following:
- (A) Water directly or indirectly used in the operation of the AFO for any or all of the following:
 - (i) Spillage or overflow from animal or poultry watering systems.
 - (ii) Washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities.
 - (iii) Direct contact swimming, washing, or spray cooling of animals.
 - (iv) Dust control.
 - (B) Process wastewater includes any water that comes into contact with or is a constituent of any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs, or bedding.
- (13) “Production area” means that part of an AFO that includes the following:
- (A) The animal confinement areas.
 - (B) The manure storage areas.
 - (C) The raw materials storage areas.
 - (D) The waste containment areas.
 - (E) Egg washing or processing facility.
 - (F) Any area used in the storage, handling, treatment, or disposal of mortalities.
- (14) “Raw materials storage area” includes, but is not limited to, the following:
- (A) Feed silos.
 - (B) Silage bunkers.
 - (C) Bedding materials.
- (15) “Small concentrated animal feeding operation” or “small CAFO” means an AFO that is designated as a CAFO and is not a medium CAFO.
- (16) “Waste containment area” means an area designed to contain manure, litter or process wastewater and includes, but is not limited to, the following:
- (A) Settling basins.
 - (B) Areas within berms and diversions that separate uncontaminated storm water.
- (c) Case-by-case designation of concentrated animal feeding operations **requirements are as follows:**
- (1) Notwithstanding any other provision of this section, any animal feeding operation may be designated as a concentrated animal feeding operation where it is determined to be a significant contributor of ~~pollution~~ **pollutants** to

the waters of the state. In making this designation, the commissioner shall consider the following factors:

- (A) The size of the animal feeding operation and the amount of wastes reaching waters of the state.
- (B) The location of the animal feeding operation relative to waters of the state.
- (C) The means of conveyance of ~~animal wastes~~ **manure** and process wastewaters into waters of the state.
- (D) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes, **manure**, and process wastewaters into waters of the state. ~~and~~
- (E) Other factors relevant to the significance of the pollution problem under consideration.

(2) In no case shall a permit application be required from a concentrated animal feeding operation designated under this subsection until there has been an on-site inspection of the operation and a determination that the operation should be regulated under the permit program.

(3) No animal feeding operation with less than the numbers of animals set forth in subsection ~~(b)~~ **(b)(6)** shall be designated as a concentrated animal feeding operation unless:

- (A) pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or
- (B) pollutants are discharged directly into waters of the state ~~which that~~ originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) An owner or operator of a large CAFO does not need to seek permit coverage under this rule or 327 IAC 15-15 if the owner or operator has received a notification from the commissioner of a determination that the CAFO has no potential to discharge in accordance with 327 IAC 15-15-12. (*Water Pollution Control Board; 327 IAC 5-4-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 642*)

SECTION 2. 327 IAC 15-15 IS ADDED TO READ AS FOLLOWS:

Rule 15. Concentrated Animal Feeding Operations

327 IAC 15-15-1 Purpose

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1
Affected: IC 13-18-10

Sec. 1. The purpose of this rule is to establish an NPDES general permit for CAFOs. In addition to the requirements of this article for all general permits, this rule establishes the requirements for CAFOs in Indiana. (*Water Pollution Control Board; 327 IAC 15-15-1*)

327 IAC 15-15-2 Definitions

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1
Affected: IC 13-11-2; IC 13-18-10

Sec. 2. The definitions contained in IC 13-11-2, 327 IAC 5-1.5, 327 IAC 5-4-3, and 327 IAC 15-1-2 apply throughout this rule. In addition to those definitions, the following definitions apply throughout this rule:

- (1) “Manure management plan” or “MMP” means the plan required under 327 IAC 16 for the proper handling, storage and disposal of manure, litter, and process wastewater.
- (2) “NRCS 590 standard” means the Indiana Natural Resources Conservation Service (NRCS) Nutrient Management Conservation Practice Standard, Code 590, July 2001.

(*Water Pollution Control Board; 327 IAC 15-15-2*)

327 IAC 15-15-3 Applicability

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1
Affected: IC 13-18-10; IC 13-30-3

Sec. 3. (a) This rule applies to all CAFOs or AFOs designated as CAFOs under 327 IAC 5-4-3(c) located within the permit boundary set forth in section 4 of this rule. All CAFO owners or operators must seek coverage under this rule or through an individual NPDES permit, except as provided in subsection (d).

(b) Any owner or operator covered by this rule can request to be excluded from coverage under this general permit rule by applying for and obtaining an individual NPDES permit.

(c) A person excluded from the general permit rule solely because the person has a valid existing individual

NPDES permit may request coverage under the general permit rule and may request revocation of the existing individual NPDES permit pursuant to 327 IAC 15-2-3.

(d) The discharge of manure, litter, or process wastewater to waters of the state from a CAFO as a result of land application of the manure, litter, or process wastewater to land areas under its control is a discharge from the CAFO subject to NPDES permit requirements, except in the event of an agricultural storm water discharge. A precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge provided the manure, litter or wastewater has been applied in accordance with site specific nutrient management practices and the requirements of this rule.

(e) An owner or operator proposing:

(1) construction of a CAFO;

(2) construction at a CFO that results in an increase in the number of animals such that it becomes a CAFO; or

(3) construction of a confinement building or waste management system at a CAFO,

must apply for an approval in accordance with section 4 of this rule.

(Water Pollution Control Board; 327 IAC 15-15-3)

327 IAC 15-15-4 Construction Approval

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec.4. (a) An owner or operator proposing:

(1) construction of a CAFO;

(2) construction at a CFO that results in an increase in the number of animals such that it becomes a CAFO; or

(3) construction of a confinement building or waste management system at a CAFO,

must apply for a CFO approval from the commissioner in accordance with the following:

(1) 327 IAC 16-3-1(d) through (e).

(2) 327 IAC 16-5.

(3) 327 IAC 16-7-1.

(4) 327 IAC 16-7-2.

(5) 327 IAC 16-7-5 through 327 IAC 16-7-13.

(6) 327 IAC 16-8.

(b) If the proposed construction for the CAFO meets the requirements of this section, as applicable, the commissioner will issue an approval. The approval can only be denied for non-compliance with applicable provisions in this section and this rule.

(Water Pollution Control Board; 327 IAC 15-15-4)

327 IAC 15-15-5 General permit rule boundary

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 5. All CAFOs, or AFOs designated as CAFOs under 327 IAC 5-4-3(c) or 40 CFR 122.23(c), within the boundaries of the state are regulated by this rule. *(Water Pollution Control Board; 327 IAC 15-15-5)*

327 IAC 15-15-6 CFO approvals for CAFOs subject to the general permit rule

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 6. (a) Qualifying for this general permit rule constitutes an approval under IC 13-18-10.

(b) A CAFO that has a general permit is not required to obtain or renew the CFO approval under 327 IAC 16-7-3 and 327 IAC 16-7-4 in order to operate.

(c) A CFO approval under section 4 of this rule is required for construction designated under section 4 of this rule. *(Water Pollution Control Board; 327 IAC 15-15-6)*

327 IAC 15-15-7 Notice of intent letter requirements

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 7. (a) The owner or operator of a CAFO shall submit a notice of intent (NOI) letter, on a form supplied by the commissioner, to the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, IN 46206-6015, Attention: Permits Section.

(b) The NOI letter shall include the following:

- (1) Name, telephone number, and mailing address of the owner and operator.
- (2) Facility name and location address. Contact person and telephone number.
- (3) Type and number of animals at the facility.
- (4) Type of containment and storage and total capacity for manure, litter, and process wastewater storage.
- (5) Total number of acres under control of the applicant available for land application.
- (6) Estimated amount of manure, litter, and process wastewater transferred to other persons per year (tons/gallons).
- (7) List of other environmental permits held and permit numbers including the CFO farm ID number provided on state CFO approval under 327 IAC 16.
- (8) A topographic map of the facility.
- (9) Payment of application fee of fifty dollars (\$50).
- (10) SIC code for the facility.

(c) The NOI letter must be signed by:

- (1) the owner or operator of the facility for which the NOI is submitted; or
- (2) a person described under 327 IAC 15-4-3(g).

(d) Following submittal of the NOI letter to IDEM, IDEM shall do the following:

- (1) Review the NOI for completeness and applicability under this rule.
- (2) Consider comments received on whether a facility meets the eligibility requirements for a general permit.
- (3) Determine if the facility is eligible for a general permit under this rule or will be required to obtain an individual NPDES permit under 327 IAC 5.
- (4) Request additional information, if needed.
- (5) Notify the facility, within ninety (90) days of receipt of the NOI, that the applicant:
 - (A) qualifies for the general permit under this rule;
 - (B) does not qualify for the general permit under this rule; or
 - (C) must submit an individual NPDES permit application.

(e) In accordance with 40 CFR 122.28(b), any interested person may petition the commissioner to require a person subject to this rule to apply for and obtain an individual NPDES permit.

(f) Compliance with the NOI letter submission requirements under this rule may not be transferred. If ownership of a facility is transferred to a new person, that person must submit a NOI letter under this section or apply for an individual NPDES permit under 327 IAC 5. The new owner must submit the NOI at least thirty (30) days prior to beginning operation at the transferred facility.

(g) A determination under this section is appealable under IC 4-21.5. (*Water Pollution Control Board; 327 IAC 15-15-7*)

327 IAC 15-15-8 Notice of intent submittal deadline; additional information

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 8. (a) The following are required to submit an NOI on or before April 13, 2006:

- (1) CAFOs with one thousand (1,000) or more cow/calf pairs.
- (2) CAFOs with one thousand (1,000) or more veal calves.
- (3) CAFOs with ten thousand (10,000) or more swine weighing less than fifty five (55) pounds.
- (4) CAFOs with one hundred twenty-five thousand (125,000) or more chickens other than laying hens and if the operation uses other than a liquid manure handling system.
- (5) CAFOs with eighty-two thousand (82,000) or more laying hens if the operation uses other than a liquid manure handling system.
- (6) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOS prior to that date because the operation discharged, is discharging, or will discharge only in the event of a twenty-five (25) year, twenty-four (24) hour storm.

These CAFOs must maintain a CFO approval under 327 IAC 16 until the NOI is submitted to comply with this rule.

(b) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date because the operation has not discharged, does not discharge and will not discharge except in the event of a twenty-five (25) year, twenty-four (24) hour storm must certify to the commissioner in writing within ninety (90) days of the effective date of this rule that the AFO was not required to apply for a permit under 327 IAC 5 and that a discharge has not occurred from the operation and the operation was constructed and is at all times being maintained to preclude discharge during dry weather and wet weather up to and including the twenty-five (25) year, twenty-four (24) hour storm. The certification shall be signed in accordance with 327 IAC 15-4-3(g). Any operation that has a discharge after certifying to the commission under this subsection shall submit an NOI within thirty (30) days after the discharge.

(c) The owner or operator of any existing CAFO, except those listed in subsection (a), or timely certifying under subsection (b), shall submit a NOI letter within ninety (90) days of the effective date of this rule.

(d) Any person proposing a new CAFO facility within the permit boundary shall submit a NOI letter at least one hundred eighty (180) days before the date the facility is populated with animals and must comply with all requirements of this rule upon submittal of the NOI.

(e) Operations designated as a CAFO in accordance with 327 IAC 5-4-3(c) or 40 CFR 122.23(c) must submit an NOI no later than ninety (90) days after receiving the notice of designation. *(Water Pollution Control Board; 327 IAC 15-15-8)*

327 IAC 15-15-9 General conditions

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 9. (a) In addition to the conditions set forth in this rule, the conditions for a NPDES general permit under the following apply:

- (1) 327 IAC 15-1-1 Purpose.
- (2) 327 IAC 15-1-2 Definitions.
- (3) 327 IAC 15-1-3 Department Request for Data.
- (4) 327 IAC 15-1-4 Enforcement.
- (5) 327 IAC 15-2-1 Purpose and Scope.
- (6) 327 IAC 15-2-3 NPDES General Permit Rule Applicability Requirements.
- (7) 327 IAC 15-2-4 Administrative Requirement for NPDES General Permits.
- (8) 327 IAC 15-2-5 Notice of Intent Letter.
- (9) 327 IAC 15-2-6 Exclusions.
- (10) 327 IAC 15-2-7 Effect of General Permit Rule.
- (11) 327 IAC 15-2-8 Nontransferability of Notification Requirements; Time Limits for Individual NPDES Permit Applications.
- (12) 327 IAC 15-2-9 Special Requirements for NPDES General Permit Rule.
- (13) 327 IAC 15-2-10 Prohibitions.
- (14) 327 IAC 15-4-1, excluding subsections (h) and (m), General Conditions.
- (15) 327 IAC 15-4-3 Reporting Requirements.

(b) The permittee must comply with 327 IAC 16-9 through 327 IAC 16-12 and must maintain the manure management plan (MMP) required under 327 IAC 16-7-11.

(c) This permit does not constitute a new or amended permit under 327 IAC 16-10-3(f)(2).

(d) Animals may not have direct access to waters of the state.

(e) Disposal of dead animals must be handled under rules of the board of animal health at 345 IAC 7-7-3. *(Water Pollution Control Board; 327 IAC 15-15-9)*

327 IAC 15-15-10 Specific permit conditions

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec.10. The following are specific permit conditions that apply to all CAFO NPDES general permits. Permit

holders must:

- (1) Obtain approval under 327 IAC 16-7-1(b) for any change in design or construction under 327 IAC 16-8 and 327 IAC 16-9-1.
- (2) Comply with NRCS 590 Standard* by December 31, 2006, unless the commissioner has approved an alternative method to minimize the potential for nutrients to be transported or to migrate. This approval is based on satisfying the intent of the NRCS 590 Standard*.
- (3) Submit an annual report to the commissioner by February fifteenth of each year for the previous calendar year with the following information:
 - (A) Number and type of animals, whether in open confinement or housed under roof.
 - (B) Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous twelve (12) months.
 - (C) Estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO in the previous twelve (12) months.
 - (D) Total number of acres for land application covered by MMP required by this rule.
 - (E) Total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous twelve (12) months.
 - (F) Summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous twelve (12) months, including the date, time, and approximate volume for each discharge.
- (4) Develop soil conservation practice plan for land application areas within one (1) year after the effective date of this rule and implement the plan within three years after the effective date of this rule. Developing and implementing a CNMP within the time frame specified in this subdivision satisfies this requirement. Any land:
 - (A) not owned or controlled by the CAFO to which manure is applied; and
 - (B) where the land owner does not implement conservation practices,must be used in accordance with 327 IAC 16-10-3 through 327 IAC 16-10-5.
- (5) Conduct manure testing for nitrogen and phosphorus annually.
- (6) Land application of liquid manure on snow covered or frozen ground is prohibited unless done in accordance with a plan approved by the commissioner. The plan must demonstrate to the commissioner that land application under such conditions will not lead to runoff and discharge to waters of the state. The plan may include information about slope, barriers between the land application area and waters of the state, method of application, other conservation practices to be used, or any other information that would demonstrate that the potential to discharge pollutants to waters of the state is minimized. Permittees may not land apply under such conditions until receiving approval of the plan by the commissioner.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Land Quality, Indiana Government Center-North, Eleventh Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204 or online at <http://www.nrcs.usda.gov/technical/ECS/nutrient/590.html>. (*Water Pollution Control Board; 327 IAC 15-15-10*)

327 IAC 15-15-11 Inspection and enforcement

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1
Affected: IC 13-18-10; IC 13-30

Sec. 11. (a) The permittee shall allow the commissioner or an authorized representative, upon presentation of credentials, to enter upon the premises where a regulated facility or activity is located, have access to and copy any records that must be kept under the conditions of this rule, in accordance with 327 IAC 15-4-1(l).

(b) The conditions of this rule are subject to enforcement pursuant to 327 IAC 15-4-1 and IC 13-30. (*Water Pollution Control Board; 327 IAC 15-15-11*)

327 IAC 15-15-12 No potential to discharge determination

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1
Affected: IC 13-18-10

Sec. 12. (a) The commissioner, upon request, may make a case-specific determination that a large CAFO has no potential to discharge pollutants to waters of the state. When making such a determination, the commissioner shall consider the following:

- (1) The potential for discharges from the production area.

- (2) The potential for discharges from any land application area.
- (3) Any record of prior discharges by the CAFO.

(b) The commissioner shall not determine the CAFO to have no potential to discharge pollutants if the CAFO has had a discharge within the five (5) years prior to the date of the request under this section.

(c) To request a determination of no potential to discharge, the owner or operator shall submit any information that would support such a determination, including all NOI letter information required under section 5 of this rule. The commissioner may require additional information to supplement the request and may gather information through an on-site inspection of the CAFO. The information is to be submitted to the commissioner by the date required for submission of a NOI or permit application.

(d) Before making a final decision to grant a no potential to discharge determination, the commissioner shall issue a public notice of receipt of the request. The notice must be accompanied by a fact sheet, which shall include the following:

- (1) A brief description of the type of facility or activity requesting the determination.
- (2) A brief summary of the factual basis, upon which the request was based, for granting the determination.
- (3) A description of the procedures for reaching a final decision on the determination.

(e) The commissioner must notify a CAFO of the final determination within ninety (90) days of receiving the request. If the commissioner denies the no potential for discharge determination, the owner or operator must seek coverage under a permit within thirty (30) days of the denial.

(f) Any unpermitted CAFO that discharges pollutants into waters of the state is in violation of the Clean Water Act even if it has received a no potential to discharge determination from the commissioner.

(g) Any CAFO that has received a determination under this section but that anticipates changes in circumstances that could create the potential for a discharge shall contact the commissioner and apply for and obtain permit authorization prior to the change of circumstances.

(h) The commissioner retains the authority to require NPDES permit coverage for a CAFO that has received a determination under this section if circumstances at the facility change, new information becomes available, or there is reason to believe that the CAFO has a potential to discharge. (*Water Pollution Control Board; 327 IAC 15-15-12*)

327 IAC 15-15-13 Duration and renewal of coverage

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1
Affected: IC 13-18-10

Sec. 13. (a) Coverage under this rule is granted by the commissioner for a period of five (5) years from the date coverage commences.

(b) Coverage commences on the date that the applicant receives a letter of approval from the commissioner. The commissioner shall notify the applicant within ninety (90) days of receipt of the NOI, as required in section 7 of this rule. If the applicant does not receive notification from the commissioner within the time frames specified in this section, coverage shall commence ninety (90) days from the date the commissioner receives the NOI.

(c) To obtain renewal of coverage under this general permit rule, the information required under section 5 of this rule shall be submitted to the commissioner no later than forty-five (45) days prior to the expiration of coverage under this rule unless the commissioner determines that a later date is acceptable.

(d) If a CAFO is required to submit an application for an individual NPDES permit, the general permit terminates when:

- (1) the owner or operator fails to submit the permit application required under section 5 of this rule; or
- (2) the individual permit is issued or denied by the commissioner.

(*Water Pollution Control Board; 327 IAC 15-15-13*)

327 IAC 15-15-14 Effluent limitations

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1
Affected: IC 13-18-10

Sec. 14. (a) CAFOs subject to this rule are required to meet the effluent limitations contained in 40 CFR 412*.

(b) Compliance with general and specific permit conditions as required by section 9 and 10 of this rule, constitutes compliance with a nutrient management plan and implementation of best management practices as detailed in 40 CFR 412.4.

(c) Any discharges under this rule are required to meet water quality standards under 327 IAC 5.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Land Quality, Indiana Government Center-North, Eleventh Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Water Pollution Control Board; 327 IAC 15-15-14*)**